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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,061	07/31/2003	Robert E. Richard	02-321	9972
27774 7590 03/17/2011 MAYER & WILLIAMS PC 251 NORTH AVENUE WEST Suite 201 WESTFIELD, NJ 07090				
EXAMINER				
SIMMONS, CHRIS E				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
03/17/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/632,061

## Applicant(s)

RICHARD ET AL.

## Examiner

CHRIS E. SIMMONS

## Art Unit

1612

**Period for Reply**  
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-20 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-20 and 23-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

Applicants' arguments, filed 11/08/2010, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

Applicant's election without traverse of poly(methyl acrylate) in the reply filed on 10/02/2006 is noted. It is further noted that the transition to glass T°C provided by poly(methyl acrylate) is 10°C. Claims 28 and 29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species (i.e., poly(butyl acrylate which has a transition to glass T°C of -54°C), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/02/2006.

### ***Claim Rejections - 35 USC § 103***

Claims 1-7, 9, 11-20 and 23-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pinchuk et al in view of Ruckenstein et al., the combination taken further in view of Hossainy et al., as evidenced by Reference Polymer Properties.

Applicant argues Pinchuk does not disclose graft copolymers and prefers polyolefin blocks as the elastomeric (rubbery) blocks, and is silent regarding a rubbery block of rubbery acrylic units such as a poly(alkyl acrylate), poly(haloalkyl acrylate) or poly(cyanoalkyl acrylate) blocks as claimed in claim 13.

The examiner does not find these arguments to be persuasive. Pinchuk's lack of explicitly teaching a graft copolymer that includes a poly(alkyl acrylate), is remedied by combining the teachings of Pinchuk with those of Ruckenstein, as Ruckenstein expressly teaches grafting copolymers for a multitude of reason. The poly(alkyl acrylate) limitation is met by further combining the Pinchuk and Ruckenstein with the teachings of Hossainy, which discloses poly(methyl acrylate) in implantable devices .

Applicant argues Ruckenstein does not make up for the above alleged deficiencies in Pinchuk, for example, because Ruckenstein does not teach or suggest acrylate graft copolymers, but rather discloses copolymers with methacrylate groups.

Examiner does not find this argument persuasive because the acrylate limitation is met by Hossainy while the graft copolymer limitation is met by Ruckenstein.

Applicant argues Hossainy describes copolymers of monomers that include methyl acrylate, but does not teach or suggest an acrylic graft copolymer like that claimed, much less an acrylic graft copolymer comprising (i) a rubbery block of rubbery acrylic units and (ii) a hard block of hard units like that claimed. Applicant argues deficiencies exist in the other references including Pinchuk, which doesn't disclose any graft copolymer whatsoever, and Ruckenstein, which doesn't disclose rubber acrylic units like those claimed (instead disclosing copolymers comprising methacrylate units).

Nor does Ruckenstein, or any other cited reference, teach the desirability of combining a rubbery and hard blocks within a given graft copolymer.

The examiner does not find these arguments persuasive because one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. As outlined in the 7/17/2010 Office action, Pinchuk discloses the combination of rubbery and hard block copolymers for incorporation in a coating for implantable devices, Ruckenstein discloses grafting of copolymers and Hossainy discloses the rubbery poly(methyl acrylate) as a polymer suitable for incorporation in a coating for drug-releasing implantable devices. Accordingly, all of the limitations applicant argues is lacking in one reference are found in another. Accordingly, applicant's arguments against the references individually are not found to be persuasive.

Claim 8 stands rejected under 35 USC 103(a) as being unpatentable over Pinchuk et al., Ruckenstein et al. and Hossainy et al. as evidenced by Reference Polymer Properties, the combination taken further in view of Williams.

Applicant argues the present claims are patentable over Pinchuk, Ruckenstein, Hossainy, and Reference Polymer Properties for the reasons set forth above. Williams, which is cited for its teachings including elongation at break, does not make up for these deficiencies.

Examiner does not agree that the present claims are patentable over Pinchuk, Ruckenstein, Hossainy, and Reference Polymer Properties for the reasons set forth above.

No claims are allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRIS E. SIMMONS whose telephone number is

(571)272-9065. The examiner can normally be reached on Monday - Friday from 7:30 - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris E Simmons/  
Examiner, Art Unit 1612

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612